

AMENDED IN ASSEMBLY MAY 1, 2008

AMENDED IN ASSEMBLY MARCH 10, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 1946**

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**Introduced by Assembly Member Nava**

February 13, 2008

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An act to amend Section 338.1 of the Code of Civil Procedure, and to amend Sections 13223, 13350, 13361, 13385, and 13386 of the Water Code, relating to environmental enforcement.

### LEGISLATIVE COUNSEL'S DIGEST

AB 1946, as amended, Nava. Hazardous materials: water quality: enforcement.

(1) Existing law of civil procedure relating to the time for commencing an action requires that actions for civil penalties or punitive damages under specified provisions relating to hazardous waste and hazardous substances be commenced within 5 years after the discovery by the agency bringing the action of the facts constituting the grounds for commencing the action.

This bill would include within that requirement certain actions relating to hazardous materials release response plans and inventory.

(2) The Porter-Cologne Water Quality Act authorizes each California ~~Regional Water Quality Control Board~~ *regional water quality control board* to delegate certain powers to its executive officer. That authorization, except as specified, excludes the delegation of the application to the Attorney General for judicial enforcement.

This bill would delete that exclusion, thereby authorizing a regional board to delegate to its executive officer the authority to apply to the Attorney General for judicial enforcement.

(3) The act requires every civil action brought under its provisions to be brought by the Attorney General in the name of the people, upon request of the State Water Resources Control Board or a regional board, authorizes those actions to be joined or consolidated, and provides in prescribed circumstances for petition to a court for relief.

This bill, with specified exceptions, would additionally ~~require~~ *authorize* a district attorney, a city attorney of a city with a population that exceeds 750,000, or a city attorney for a city and county, to bring civil actions under the act, and would make conforming changes to those petition provisions. ~~By imposing new duties on city attorneys and district attorneys, this bill would impose a state-mandated local program.~~

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~yes~~ *no*.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 338.1 of the Code of Civil Procedure is
- 2 amended to read:
- 3 338.1. An action for civil penalties or punitive damages
- 4 authorized under Chapter 6.5 (commencing with Section 25100),
- 5 Chapter 6.7 (commencing with Section 25280), Chapter 6.8
- 6 (commencing with Section 25300), or Chapter 6.95 (commencing
- 7 with Section 25500), of Division 20 of the Health and Safety Code
- 8 shall be commenced within five years after the discovery by the
- 9 agency bringing the action of the facts constituting the grounds
- 10 for commencing the action.
- 11 SEC. 2. Section 13223 of the Water Code is amended to read:
- 12 13223. (a) Each regional board may delegate any of its powers
- 13 and duties vested in it by this division to its executive officer,
- 14 except the following:

1 (1) The promulgation of any regulation.

2 (2) The issuance, modification, or revocation of any water  
3 quality control plan, water quality objectives, or waste discharge  
4 requirement.

5 (3) The issuance, modification, or revocation of any cease and  
6 desist order.

7 (4) The holding of any hearing on water quality control plans.

8 (b) A reference made in this division to any action that may be  
9 taken by a regional board includes an action by its executive officer  
10 pursuant to powers and duties delegated to the executive officer  
11 by the regional board.

12 SEC. 3. Section 13350 of the Water Code is amended to read:

13 13350. (a) Any person who (1) violates any cease and desist  
14 order or cleanup and abatement order hereafter issued, reissued,  
15 or amended by a regional board or the state board, or (2) in  
16 violation of any waste discharge requirement, waiver condition,  
17 certification, or other order or prohibition issued, reissued, or  
18 amended by a regional board or the state board, discharges waste,  
19 or causes or permits waste to be deposited where it is discharged,  
20 into the waters of the state, or (3) causes or permits any oil or any  
21 residuary product of petroleum to be deposited in or on any of the  
22 waters of the state, except in accordance with waste discharge  
23 requirements or other actions or provisions of this division, shall  
24 be liable civilly, and remedies may be proposed, in accordance  
25 with subdivision (d) or (e).

26 (b) (1) Any person who, without regard to intent or negligence,  
27 causes or permits any hazardous substance to be discharged in or  
28 on any of the waters of the state, except in accordance with waste  
29 discharge requirements or other provisions of this division, shall  
30 be strictly liable civilly in accordance with subdivision (d) or (e).

31 (2) For purposes of this subdivision, the term “discharge”  
32 includes only those discharges for which Section 13260 directs  
33 that a report of waste discharge shall be filed with the regional  
34 board.

35 (3) For purposes of this subdivision, the term “discharge” does  
36 not include any emission excluded from the applicability of Section  
37 311 of the Clean Water Act (33 U.S.C. Sec. 1321) pursuant to  
38 Environmental Protection Agency regulations interpreting Section  
39 311(a)(2) of the Clean Water Act (33 U.S.C. Sec. 1321(a)(2)).

1 (c) There shall be no liability under subdivision (b) if the  
2 discharge is caused solely by any one or combination of the  
3 following:

4 (1) An act of war.

5 (2) An unanticipated grave natural disaster or other natural  
6 phenomenon of an exceptional, inevitable, and irresistible  
7 character, the effects of which could not have been prevented or  
8 avoided by the exercise of due care or foresight.

9 (3) Negligence on the part of the state, the United States, or any  
10 department or agency thereof; provided, that this paragraph shall  
11 not be interpreted to provide the state, the United States, or any  
12 department or agency thereof a defense to liability for any  
13 discharge caused by its own negligence.

14 (4) An intentional act of a third party, the effects of which could  
15 not have been prevented or avoided by the exercise of due care or  
16 foresight.

17 (5) Any other circumstance or event which causes the discharge  
18 despite the exercise of every reasonable precaution to prevent or  
19 mitigate the discharge.

20 (d) The court may impose civil liability either on a daily basis  
21 or on a per gallon basis, but not both.

22 (1) The civil liability on a daily basis shall not exceed fifteen  
23 thousand dollars (\$15,000) for each day the violation occurs.

24 (2) The civil liability on a per gallon basis shall not exceed  
25 twenty dollars (\$20) for each gallon of waste discharged.

26 (e) The state board or a regional board may impose civil liability  
27 administratively pursuant to Article 2.5 (commencing with Section  
28 13323) of Chapter 5 either on a daily basis or on a per gallon basis,  
29 but not both.

30 (1) The civil liability on a daily basis shall not exceed five  
31 thousand dollars (\$5,000) for each day the violation occurs.

32 (A) When there is a discharge, and a cleanup and abatement  
33 order is issued, except as provided in subdivision (f), the civil  
34 liability shall not be less than five hundred dollars (\$500) for each  
35 day in which the discharge occurs and for each day the cleanup  
36 and abatement order is violated.

37 (B) When there is no discharge, but an order issued by the  
38 regional board is violated, except as provided in subdivision (f),  
39 the civil liability shall not be less than one hundred dollars (\$100)  
40 for each day in which the violation occurs.

1 (2) The civil liability on a per gallon basis shall not exceed ten  
2 dollars (\$10) for each gallon of waste discharged.

3 (f) A regional board shall not administratively impose civil  
4 liability in accordance with paragraph (1) of subdivision (e) in an  
5 amount less than the minimum amount specified, unless the  
6 regional board makes express findings setting forth the reasons  
7 for its action based upon the specific factors required to be  
8 considered pursuant to Section 13327.

9 ~~(g) The Attorney General, a district attorney, a city attorney of  
10 a city with a population that exceeds 750,000, or a city attorney  
11 for a city and county,~~

12 (g) (1) *The Attorney General*, upon request of a regional board  
13 or the state board, shall petition the superior court to impose, assess,  
14 and recover those sums. In determining that amount, the court shall  
15 be subject to Section 13351.

16 (2) *A district attorney, a city attorney of a city with a population  
17 that exceeds 750,000, or a city attorney for a city and county, upon  
18 request of the state board or a regional board, may petition the  
19 superior court to impose, assess, and recover those sums. In  
20 determining that amount, the court shall be subject to Section  
21 13351.*

22 (h) Article 3 (commencing with Section 13330) and Article 6  
23 (commencing with Section 13360) apply to proceedings to impose,  
24 assess, and recover an amount pursuant to this article.

25 (i) Any person who incurs any liability established under this  
26 section shall be entitled to contribution for that liability from any  
27 third party, in an action in the superior court and upon proof that  
28 the discharge was caused in whole or in part by an act or omission  
29 of the third party, to the extent that the discharge is caused by the  
30 act or omission of the third party, in accordance with the principles  
31 of comparative fault.

32 (j) Remedies under this section are in addition to, and do not  
33 supersede or limit, any and all other remedies, civil or criminal,  
34 except that no liability shall be recoverable under subdivision (b)  
35 for any discharge for which liability is recovered under Section  
36 13385.

37 (k) Notwithstanding any other provision of law, all funds  
38 generated by the imposition of liabilities pursuant to this section  
39 shall be deposited into the Waste Discharge Permit Fund. These  
40 moneys shall be separately accounted for, and shall be expended

1 by the state board, upon appropriation by the Legislature, to assist  
2 regional boards, and other public agencies with authority to clean  
3 up waste or abate the effects of the waste, in cleaning up or abating  
4 the effects of the waste on waters of the state or for the purposes  
5 authorized in Section 13443.

6 SEC. 4. Section 13361 of the Water Code is amended to read:

7 13361. (a) (1) Every civil action brought at the request of a  
8 regional board or the state board to enforce Section 13350 or  
9 Chapter 5.5 (commencing with Section 13370) shall be brought  
10 by the Attorney General, a district attorney, ~~or~~ a city attorney of  
11 a city with a population that exceeds 750,000, *or a city attorney*  
12 *for a city and county*, in the name of the people of the State of  
13 California and those actions relating to the same discharge may  
14 be joined or consolidated.

15 (2) Every civil action brought at the request of a regional board  
16 or the state board to enforce provisions of this division other than  
17 Section 13350 or Chapter 5.5 (commencing with Section 13370)  
18 shall be brought by the Attorney General in the name of the people  
19 of the State of California and those actions relating to the same  
20 discharge may be joined or consolidated.

21 (b) Any civil action brought pursuant to this division shall be  
22 brought in a county in which the discharge is made, or proposed  
23 to be made. However, any action by or against a city, city and  
24 county, county, or other public agency shall, upon motion of either  
25 party, be transferred to a county or city and county not a party to  
26 the action or to a county or city and county other than that in which  
27 the city or public agency is located.

28 (c) In any civil action brought pursuant to this division in which  
29 a temporary restraining order, preliminary injunction, or permanent  
30 injunction is sought, it shall not be necessary to allege or prove at  
31 any stage of the proceeding that irreparable damage will occur  
32 should the temporary restraining order, preliminary injunction, or  
33 permanent injunction not be issued, or that the remedy at law is  
34 inadequate, and the temporary restraining order, preliminary  
35 injunction, or permanent injunction shall issue without those  
36 allegations and without that proof.

37 SEC. 5. Section 13385 of the Water Code is amended to read:

38 13385. (a) Any person who violates any of the following shall  
39 be liable civilly in accordance with this section:

40 (1) Section 13375 or 13376.

1 (2) Any waste discharge requirements or dredged or fill material  
2 permit issued pursuant to this chapter or any water quality  
3 certification issued pursuant to Section 13160.

4 (3) Any requirements established pursuant to Section 13383.

5 (4) Any order or prohibition issued pursuant to Section 13243  
6 or Article 1 (commencing with Section 13300) of Chapter 5, if the  
7 activity subject to the order or prohibition is subject to regulation  
8 under this chapter.

9 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,  
10 401, or 405 of the Clean Water Act, as amended.

11 (6) Any requirement imposed in a pretreatment program  
12 approved pursuant to waste discharge requirements issued under  
13 Section 13377 or approved pursuant to a permit issued by the  
14 administrator.

15 (b) Civil liability may be imposed by the superior court in an  
16 amount not to exceed the sum of both of the following:

17 (1) Twenty-five thousand dollars (\$25,000) for each day in  
18 which the violation occurs.

19 (2) Where there is a discharge, any portion of which is not  
20 susceptible to cleanup or is not cleaned up, and the volume  
21 discharged but not cleaned up exceeds 1,000 gallons, an additional  
22 liability not to exceed twenty-five dollars (\$25) multiplied by the  
23 number of gallons by which the volume discharged but not cleaned  
24 up exceeds 1,000 gallons. Upon request of a regional board or the  
25 ~~state board, the Attorney General, a district attorney, a city attorney~~  
26 ~~of a city with a population that exceeds 750,000, or a city attorney~~  
27 ~~for a city and county, state board, the Attorney General~~ shall  
28 petition the superior court to impose the liability. *Upon request of*  
29 *the state board or a regional board, a district attorney, a city*  
30 *attorney of a city with a population that exceeds 750,000, or a city*  
31 *attorney for a city and county, may petition the superior court to*  
32 *impose the liability.*

33 (c) Civil liability may be imposed administratively by the state  
34 board or a regional board pursuant to Article 2.5 (commencing  
35 with Section 13323) of Chapter 5 in an amount not to exceed the  
36 sum of both of the following:

37 (1) Ten thousand dollars (\$10,000) for each day in which the  
38 violation occurs.

39 (2) Where there is a discharge, any portion of which is not  
40 susceptible to cleanup or is not cleaned up, and the volume

1 discharged but not cleaned up exceeds 1,000 gallons, an additional  
2 liability not to exceed ten dollars (\$10) multiplied by the number  
3 of gallons by which the volume discharged but not cleaned up  
4 exceeds 1,000 gallons.

5 (d) For purposes of subdivisions (b) and (c), “discharge”  
6 includes any discharge to navigable waters of the United States,  
7 any introduction of pollutants into a publicly owned treatment  
8 works, or any use or disposal of sewage sludge.

9 (e) In determining the amount of any liability imposed under  
10 this section, the regional board, the state board, or the superior  
11 court, as the case may be, shall take into account the nature,  
12 circumstances, extent, and gravity of the violation or violations,  
13 whether the discharge is susceptible to cleanup or abatement, the  
14 degree of toxicity of the discharge, and, with respect to the violator,  
15 the ability to pay, the effect on its ability to continue its business,  
16 any voluntary cleanup efforts undertaken, any prior history of  
17 violations, the degree of culpability, economic benefit or savings,  
18 if any, resulting from the violation, and other matters that justice  
19 may require. At a minimum, liability shall be assessed at a level  
20 that recovers the economic benefits, if any, derived from the acts  
21 that constitute the violation.

22 (f) (1) Except as provided in paragraph (2), for the purposes of  
23 this section, a single operational upset that leads to simultaneous  
24 violations of more than one pollutant parameter shall be treated  
25 as a single violation.

26 (2) (A) For the purposes of subdivisions (h) and (i), a single  
27 operational upset in a wastewater treatment unit that treats  
28 wastewater using a biological treatment process shall be treated  
29 as a single violation, even if the operational upset results in  
30 violations of more than one effluent limitation and the violations  
31 continue for a period of more than one day, if all of the following  
32 apply:

33 (i) The discharger demonstrates all of the following:

34 (I) The upset was not caused by wastewater treatment operator  
35 error and was not due to discharger negligence.

36 (II) But for the operational upset of the biological treatment  
37 process, the violations would not have occurred nor would they  
38 have continued for more than one day.



1 (III) The discharger carried out all reasonable and immediately  
2 feasible actions to reduce noncompliance with the applicable  
3 effluent limitations.

4 (ii) The discharger is implementing an approved pretreatment  
5 program, if so required by federal or state law.

6 (B) Subparagraph (A) only applies to violations that occur  
7 during a period for which the regional board has determined that  
8 violations are unavoidable, but in no case may that period exceed  
9 30 days.

10 (g) Remedies under this section are in addition to, and do not  
11 supersede or limit, any other remedies, civil or criminal, except  
12 that no liability shall be recoverable under Section 13261, 13265,  
13 13268, or 13350 for violations for which liability is recovered  
14 under this section.

15 (h) (1) Notwithstanding any other provision of this division,  
16 and except as provided in subdivisions (j), (k), and (l), a mandatory  
17 minimum penalty of three thousand dollars (\$3,000) shall be  
18 assessed for each serious violation.

19 (2) For the purposes of this section, a “serious violation” means  
20 any waste discharge that violates the effluent limitations contained  
21 in the applicable waste discharge requirements for a Group II  
22 pollutant, as specified in Appendix A to Section 123.45 of Title  
23 40 of the Code of Federal Regulations, by 20 percent or more or  
24 for a Group I pollutant, as specified in Appendix A to Section  
25 123.45 of Title 40 of the Code of Federal Regulations, by 40  
26 percent or more.

27 (i) (1) Notwithstanding any other provision of this division,  
28 and except as provided in subdivisions (j), (k), and (l), a mandatory  
29 minimum penalty of three thousand dollars (\$3,000) shall be  
30 assessed for each violation whenever the person does any of the  
31 following four or more times in any period of six consecutive  
32 months, except that the requirement to assess the mandatory  
33 minimum penalty shall not be applicable to the first three  
34 violations:

35 (A) Violates a waste discharge requirement effluent limitation.

36 (B) Fails to file a report pursuant to Section 13260.

37 (C) Files an incomplete report pursuant to Section 13260.

38 (D) Violates a toxicity effluent limitation contained in the  
39 applicable waste discharge requirements where the waste discharge

1 requirements do not contain pollutant-specific effluent limitations  
2 for toxic pollutants.

3 (2) For the purposes of this section, a “period of six consecutive  
4 months” means the period commencing on the date that one of the  
5 violations described in this subdivision occurs and ending 180  
6 days after that date.

7 (j) Subdivisions (h) and (i) do not apply to any of the following:

8 (1) A violation caused by one or any combination of the  
9 following:

10 (A) An act of war.

11 (B) An unanticipated, grave natural disaster or other natural  
12 phenomenon of an exceptional, inevitable, and irresistible  
13 character, the effects of which could not have been prevented or  
14 avoided by the exercise of due care or foresight.

15 (C) An intentional act of a third party, the effects of which could  
16 not have been prevented or avoided by the exercise of due care or  
17 foresight.

18 (D) (i) The operation of a new or reconstructed wastewater  
19 treatment unit during a defined period of adjusting or testing, not  
20 to exceed 90 days for a wastewater treatment unit that relies on a  
21 biological treatment process and not to exceed 30 days for any  
22 other wastewater treatment unit, if all of the following requirements  
23 are met:

24 (I) The discharger has submitted to the regional board, at least  
25 30 days in advance of the operation, an operations plan that  
26 describes the actions the discharger will take during the period of  
27 adjusting and testing, including steps to prevent violations and  
28 identifies the shortest reasonable time required for the period of  
29 adjusting and testing, not to exceed 90 days for a wastewater  
30 treatment unit that relies on a biological treatment process and not  
31 to exceed 30 days for any other wastewater treatment unit.

32 (II) The regional board has not objected in writing to the  
33 operations plan.

34 (III) The discharger demonstrates that the violations resulted  
35 from the operation of the new or reconstructed wastewater  
36 treatment unit and that the violations could not have reasonably  
37 been avoided.

38 (IV) The discharger demonstrates compliance with the  
39 operations plan.

1 (V) In the case of a reconstructed wastewater treatment unit,  
2 the unit relies on a biological treatment process that is required to  
3 be out of operation for at least 14 days in order to perform the  
4 reconstruction, or the unit is required to be out of operation for at  
5 least 14 days and, at the time of the reconstruction, the cost of  
6 reconstructing the unit exceeds 50 percent of the cost of replacing  
7 the wastewater treatment unit.

8 (ii) For the purposes of this section, “wastewater treatment unit”  
9 means a component of a wastewater treatment plant that performs  
10 a designated treatment function.

11 (2) (A) Except as provided in subparagraph (B), a violation of  
12 an effluent limitation where the waste discharge is in compliance  
13 with either a cease and desist order issued pursuant to Section  
14 13301 or a time schedule order issued pursuant to Section 13300,  
15 if all of the following requirements are met:

16 (i) The cease and desist order or time schedule order is issued  
17 after January 1, 1995, but not later than July 1, 2000, specifies the  
18 actions that the discharger is required to take in order to correct  
19 the violations that would otherwise be subject to subdivisions (h)  
20 and (i), and the date by which compliance is required to be achieved  
21 and, if the final date by which compliance is required to be  
22 achieved is later than one year from the effective date of the cease  
23 and desist order or time schedule order, specifies the interim  
24 requirements by which progress towards compliance will be  
25 measured and the date by which the discharger will be in  
26 compliance with each interim requirement.

27 (ii) The discharger has prepared and is implementing in a timely  
28 and proper manner, or is required by the regional board to prepare  
29 and implement, a pollution prevention plan that meets the  
30 requirements of Section 13263.3.

31 (iii) The discharger demonstrates that it has carried out all  
32 reasonable and immediately feasible actions to reduce  
33 noncompliance with the waste discharge requirements applicable  
34 to the waste discharge and the executive officer of the regional  
35 board concurs with the demonstration.

36 (B) Subdivisions (h) and (i) shall become applicable to a waste  
37 discharge on the date the waste discharge requirements applicable  
38 to the waste discharge are revised and reissued pursuant to Section  
39 13380, unless the regional board does all of the following on or  
40 before that date:

1 (i) Modifies the requirements of the cease and desist order or  
2 time schedule order as may be necessary to make it fully consistent  
3 with the reissued waste discharge requirements.

4 (ii) Establishes in the modified cease and desist order or time  
5 schedule order a date by which full compliance with the reissued  
6 waste discharge requirements shall be achieved. For the purposes  
7 of this subdivision, the regional board shall not establish this date  
8 later than five years from the date the waste discharge requirements  
9 were required to be reviewed pursuant to Section 13380. If the  
10 reissued waste discharge requirements do not add new effluent  
11 limitations or do not include effluent limitations that are more  
12 stringent than those in the original waste discharge requirements,  
13 the date shall be the same as the final date for compliance in the  
14 original cease and desist order or time schedule order or five years  
15 from the date that the waste discharge requirements were required  
16 to be reviewed pursuant to Section 13380, whichever is earlier.

17 (iii) Determines that the pollution prevention plan required by  
18 clause (ii) of subparagraph (A) is in compliance with the  
19 requirements of Section 13263.3 and that the discharger is  
20 implementing the pollution prevention plan in a timely and proper  
21 manner.

22 (3) A violation of an effluent limitation where the waste  
23 discharge is in compliance with either a cease and desist order  
24 issued pursuant to Section 13301 or a time schedule order issued  
25 pursuant to Section 13300 or 13308, if all of the following  
26 requirements are met:

27 (A) The cease and desist order or time schedule order is issued  
28 on or after July 1, 2000, and specifies the actions that the discharger  
29 is required to take in order to correct the violations that would  
30 otherwise be subject to subdivisions (h) and (i).

31 (B) The regional board finds that, for one of the following  
32 reasons, the discharger is not able to consistently comply with one  
33 or more of the effluent limitations established in the waste  
34 discharge requirements applicable to the waste discharge:

35 (i) The effluent limitation is a new, more stringent, or modified  
36 regulatory requirement that has become applicable to the waste  
37 discharge after the effective date of the waste discharge  
38 requirements and after July 1, 2000, new or modified control  
39 measures are necessary in order to comply with the effluent

1 limitation, and the new or modified control measures cannot be  
2 designed, installed, and put into operation within 30 calendar days.

3 (ii) New methods for detecting or measuring a pollutant in the  
4 waste discharge demonstrate that new or modified control measures  
5 are necessary in order to comply with the effluent limitation and  
6 the new or modified control measures cannot be designed, installed,  
7 and put into operation within 30 calendar days.

8 (iii) Unanticipated changes in the quality of the municipal or  
9 industrial water supply available to the discharger are the cause  
10 of unavoidable changes in the composition of the waste discharge,  
11 the changes in the composition of the waste discharge are the cause  
12 of the inability to comply with the effluent limitation, no alternative  
13 water supply is reasonably available to the discharger, and new or  
14 modified measures to control the composition of the waste  
15 discharge cannot be designed, installed, and put into operation  
16 within 30 calendar days.

17 (iv) The discharger is a publicly owned treatment works located  
18 in Orange County that is unable to meet effluent limitations for  
19 biological oxygen demand, suspended solids, or both, because the  
20 publicly owned treatment works meets all of the following criteria:

21 (I) Was previously operating under modified secondary  
22 treatment requirements pursuant to Section 301(h) of the Clean  
23 Water Act (33 U.S.C. Sec. 1311(h)).

24 (II) Did vote on July 17, 2002, not to apply for a renewal of the  
25 modified secondary treatment requirements.

26 (III) Is in the process of upgrading its treatment facilities to  
27 meet the secondary treatment standards required by Section  
28 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.  
29 1311(b)(1)(B)).

30 (C) The regional board establishes a time schedule for bringing  
31 the waste discharge into compliance with the effluent limitation  
32 that is as short as possible, taking into account the technological,  
33 operational, and economic factors that affect the design,  
34 development, and implementation of the control measures that are  
35 necessary to comply with the effluent limitation. For the purposes  
36 of this subdivision, the time schedule shall not exceed five years  
37 in length, except that the time schedule shall not exceed 10 years  
38 in length for the upgrade described in subclause (III) of clause (iv)  
39 of subparagraph (B). If the time schedule exceeds one year from  
40 the effective date of the order, the schedule shall include interim

1 requirements and the dates for their achievement. The interim  
2 requirements shall include both of the following:

3 (i) Effluent limitations for the pollutant or pollutants of concern.  
4 (ii) Actions and milestones leading to compliance with the  
5 effluent limitation.

6 (D) The discharger has prepared and is implementing in a timely  
7 and proper manner, or is required by the regional board to prepare  
8 and implement, a pollution prevention plan pursuant to Section  
9 13263.3.

10 (k) (1) In lieu of assessing all or a portion of the mandatory  
11 minimum penalties pursuant to subdivisions (h) and (i) against a  
12 publicly owned treatment works serving a small community, the  
13 state board or the regional board may elect to require the publicly  
14 owned treatment works to spend an equivalent amount towards  
15 the completion of a compliance project proposed by the publicly  
16 owned treatment works, if the state board or the regional board  
17 finds all of the following:

18 (A) The compliance project is designed to correct the violations  
19 within five years.

20 (B) The compliance project is in accordance with the  
21 enforcement policy of the state board, excluding any provision in  
22 the policy that is inconsistent with this section.

23 (C) The publicly owned treatment works has prepared a  
24 financing plan to complete the compliance project.

25 (2) For the purposes of this subdivision, “a publicly owned  
26 treatment works serving a small community” means a publicly  
27 owned treatment works serving a population of 10,000 persons or  
28 fewer or a rural county, with a financial hardship as determined  
29 by the state board after considering factors such as median income  
30 of the residents, rate of unemployment, or low population density  
31 in the service area of the publicly owned treatment works.

32 (l) (1) In lieu of assessing penalties pursuant to subdivision (h)  
33 or (i), the state board or the regional board, with the concurrence  
34 of the discharger, may direct a portion of the penalty amount to  
35 be expended on a supplemental environmental project in  
36 accordance with the enforcement policy of the state board. If the  
37 penalty amount exceeds fifteen thousand dollars (\$15,000), the  
38 portion of the penalty amount that may be directed to be expended  
39 on a supplemental environmental project shall not exceed fifteen

1 thousand dollars (\$15,000) plus 50 percent of the penalty amount  
2 that exceeds fifteen thousand dollars (\$15,000).

3 (2) For the purposes of this section, a “supplemental  
4 environmental project” means an environmentally beneficial project  
5 that a person agrees to undertake, with the approval of the regional  
6 board, that would not be undertaken in the absence of an  
7 enforcement action under this section.

8 (3) This subdivision applies to the imposition of penalties  
9 pursuant to subdivision (h) or (i) on or after January 1, 2003,  
10 without regard to the date on which the violation occurs.

11 (m) Upon request of a regional board or the state board, the  
12 ~~Attorney General, a district attorney, a city attorney of a city with~~  
13 ~~a population that exceeds 750,000, or a city attorney for a city and~~  
14 ~~county, Attorney General~~ shall petition the appropriate court to  
15 collect any liability or penalty imposed pursuant to this section.  
16 *Upon request of the state board or a regional board, a district*  
17 *attorney, a city attorney of a city with a population that exceeds*  
18 *750,000, or a city attorney for a city and county, may petition the*  
19 *superior court to collect any liability or penalty imposed pursuant*  
20 *to this section.* Any person who fails to pay on a timely basis any  
21 liability or penalty imposed under this section shall be required to  
22 pay, in addition to that liability or penalty, interest, attorney’s fees,  
23 costs for collection proceedings, and a quarterly nonpayment  
24 penalty for each quarter during which the failure to pay persists.  
25 The nonpayment penalty shall be in an amount equal to 20 percent  
26 of the aggregate amount of the person’s penalty and nonpayment  
27 penalties that are unpaid as of the beginning of the quarter.

28 (n) (1) Subject to paragraph (2), funds collected pursuant to  
29 this section shall be deposited in the State Water Pollution Cleanup  
30 and Abatement Account.

31 (2) (A) Notwithstanding any other provision of law, moneys  
32 collected for a violation of a water quality certification in  
33 accordance with paragraph (2) of subdivision (a) or for a violation  
34 of Section 401 of the Clean Water Act (33 U.S.C. Sec. 1341) in  
35 accordance with paragraph (5) of subdivision (a) shall be deposited  
36 in the Waste Discharge Permit Fund and separately accounted for  
37 in that fund.

38 (B) The funds described in subparagraph (A) shall be expended  
39 by the state board, upon appropriation by the Legislature, to assist  
40 regional boards, and other public agencies with authority to clean

1 up waste or abate the effects of the waste, in cleaning up or abating  
2 the effects of the waste on waters of the state or for the purposes  
3 authorized in Section 13443.

4 (o) The state board shall continuously report and update  
5 information on its Internet Web site, but at a minimum, annually  
6 on or before January 1, regarding its enforcement activities. The  
7 information shall include all of the following:

8 (1) A compilation of the number of violations of waste discharge  
9 requirements in the previous calendar year, including stormwater  
10 enforcement violations.

11 (2) A record of the formal and informal compliance and  
12 enforcement actions taken for each violation, including stormwater  
13 enforcement actions.

14 (3) An analysis of the effectiveness of current enforcement  
15 policies, including mandatory minimum penalties.

16 (p) The amendments made to subdivisions (f), (h), (i) and (j)  
17 during the second year of the 2001–02 Regular Session apply only  
18 to violations that occur on or after January 1, 2003.

19 SEC. 6. Section 13386 of the Water Code is amended to read:

20 13386. (a) *(1) Upon any threatened or continuing violation*  
21 *of any of the requirements listed in paragraphs (1) to (6), inclusive,*  
22 *of subdivision (a) of Section 13385, or upon the failure of any*  
23 *discharger into a public treatment system to comply with any cost*  
24 *or charge adopted by any public agency under Section 204(b) of*  
25 *the federal Clean Water Act (33 U.S.C. Sec. 1284(b)), as amended,*  
26 ~~*the Attorney General, a district attorney, a city attorney of a city*~~  
27 ~~*with a population that exceeds 750,000, or a city attorney for a*~~  
28 ~~*city and county, the Attorney General*~~ *upon the request of the state*  
29 *board or regional board shall petition the appropriate court for the*  
30 *issuance of a preliminary or permanent injunction, or both, as*  
31 *appropriate, restraining that person or persons from committing*  
32 *or continuing the violation.*

33 *(2) Upon request of the state board or a regional board, a*  
34 *district attorney, a city attorney of a city with a population that*  
35 *exceeds 750,000, or a city attorney for a city and county, may*  
36 *petition the appropriate court for the issuance of a preliminary or*  
37 *permanent injunction, or both, as appropriate, restraining that*  
38 *person or persons from committing or continuing the violation*  
39 *specified in paragraph (1).*



1 (b) The court shall issue an order directing defendants to appear  
2 before the court at a time and place certain and show cause why  
3 the injunction should not be issued. The court may grant  
4 prohibitory or mandatory relief as may be warranted.

5 ~~SEC. 7. If the Commission on State Mandates determines that~~  
6 ~~this act contains costs mandated by the state, reimbursement to~~  
7 ~~local agencies and school districts for those costs shall be made~~  
8 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
9 ~~4 of Title 2 of the Government Code.~~

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